

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

V.

TEXAS MUNICIPAL
RETIREMENT SYSTEM,

Garnishee-Defendant,

and

SHERRY KAYE GAUTHIER,

Judgment-Defendant.

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CIVIL ACTION NO. 1:99-CR-46 (2)

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
FINAL ORDER IN GARNISHMENT**

Pending is the Judgment-Defendant, Sherry Kaye Gauthier's, *pro se* Motion to Discontinue the Writ of Garnishment (Doc. No. 140) and Motion for Hearing (Doc. No. 141), and the Government's Motion for Entry of Final Order in Garnishment (Doc. No. 139). These matters were referred to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration and entry of proposed findings and recommended disposition. *See* 28 U.S.C. § 636(b)(1)(B); E.D. TEX. CRIM. R. 59(d). Magistrate Judge Hawthorn filed his report recommending that the court find that Gauthier's spouse's retirement funds are not exempt from garnishment and should deny her request to discontinue the writ of garnishment. (Doc. No. 144.) Magistrate Judge Hawthorn also recommended that because these funds are not exempt, Gauthier's request for a hearing on the merits should also be denied. (*Id.*)

Neither party has filed objections to the report and recommendation. Accordingly, it is **ORDERED** that the Government's Motion for Entry of Final Order in Garnishment (Doc. No.

139) is **GRANTED**, and Gauthier's *pro se* Motion to Discontinue the Writ of Garnishment (Doc. No. 140) and Motion for Hearing (Doc. No. 141) are **DENIED**.

The court further finds that Garnishee Defendant, Texas Municipal Retirement System, is in possession of nonexempt funds owed to Judgment-Defendant's spouse, Michael Gauthier, Sr. Therefore, it is **ORDERED** that Garnishee, Texas Municipal Retirement System, and its affiliates, successors, or assigns, are hereby ordered to pay to the United States the property it has in its possession, custody, or control, including property coming into the Garnishee's possession from the date the Garnishee was served, up to the amount of the debt owed in this case. Garnishee is ordered to pay to the United States at least monthly the lesser of:

1. Twenty-Five (25%) of Judgment-Defendant's spouse, Michael Gauthier, Sr.'s disposable earnings, or
2. All amounts of Judgment-Defendant's spouse, Michael Gauthier, Sr.'s disposable earnings in excess of thirty times the federal minimum hourly wage.

See 15 U.S.C. § 1673(a). To calculate disposable earnings, Garnishee-Defendant may only subtract the following from the wages, commission, and income:

1. Federal Income Tax;
2. Federal Social Security Tax;
3. State Adjusted Income Tax (if applicable); and
4. Medicare Withholding.

Garnishee-Defendant may not include deductions for health insurance, dental insurance, vision insurance, 401(k) or other types of voluntary deductions in determining disposable earnings. These payments are to continue until the unpaid balance is fully paid and satisfied or until the liability to pay expires. *See* 18 U.S.C. 3613.

All payments should bear the Judgment-Defendant's name, Sherry Gauthier, and Court Number 1:99-CR-46 (2). Payments should be made payable to the United States District Court and mailed to the United States District Clerk, Fine and Restitution Section, 211 W. Ferguson, Room 106, Tyler, Texas 75702.

SIGNED at Beaumont, Texas, this 15th day of November, 2021.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive style with a horizontal line underneath it.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE